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GILMER v. FRANCISCO.

Sept. 22, 1921.

[108 S. E. 669.]

1. **Appeal and Error (§ 781 (4)*)—Case Rendered Moot by Execution Before Supersedeas of Order for Removal of Fence.**—The case on appeal by G. from an order that the sheriff remove a fence erected by G. on his land, as claimed by him, but in the road of petitioner, and in violation of an injunction, as claimed by petitioner, becomes moot, so that appeal will be dismissed, by the fence being removed, pending the appeal, before the execution of the supersedeas bond; the case not being one in which the right of G. to have restoration of the fence is involved.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 430.]

2. **Injunction (§ 215*)—Right to Land Not Determinable in Ex Parte Proceeding for Removal of Fence Erected in Violation of Injunction.**—G. not appearing in an ex parte proceeding by L. to have removed by the sheriff a fence erected by G. in the road of L. and in violation of an injunction, as claimed by L., the court was without jurisdiction to affect, by an order therein, any right and title of G. to the land on which the fence was located.

Appeal from Circuit Court, Scott County.

Ex parte application by W. W. Francisco for an order for removal by the sheriff of a fence erected by T. P. Gilmer in claimed violation of an injunction. From such an order, said Gilmer, claiming the fence was on his own land, appeals. Appeal dismissed.

W. S. Cox and *J. P. Corns*, both of Gate City, for appellant.

S. H. Bond and *W. H. Nickels*, both of Gate City, and *L. P. Summers*, of Abingdon, for appellee.

HENNINGER v. MCGINNIS et al.

Sept. 22, 1921.

[108 S. E. 671.]

1. **Waters and Water Courses (§ 107 (3)*)—In Suit to Enjoin Diversion of Spring Water, Complainant Held Not to Have Sustained Burden of Identifying Water.**—On a bill to restrain the defendants from continuing to pipe water from a spring, thus interfering with the natural course of the water therefrom across the complainant's land, held that complainant did not sustain the burden of identifying

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.